

## SENATE BILL No. 553

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 24-4.5.

**Synopsis:** Small loans. Adds the small loan chapter to the Uniform Consumer Credit Code. Specifies the type and amount of fees that may be charged on a small loan. Provides that a small loan may not be made for a term of less than 14 days, may be secured by only one check per deferred deposit transaction, and may not be secured by personal property other than a check. Provides that a lender may not take an assignment of earnings of the debtor for payment or as security for payment of a debt arising out of a small loan. Provides that a debtor may not refinance the same small loan more than one time. Makes conforming amendments.

**Effective:** July 1, 1999.

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January 20, 1999, read first time and referred to Committee on Insurance and Financial Institutions.

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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

## SENATE BILL No. 553

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations; consumer sales and credit.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1       SECTION 1. IC 24-4.5-1-303 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 303. Index of  
3       Definitions in Article ) Definitions in this Article and the sections in  
4       which they appear are:  
5       "Agreement" ..... Section 1-301 (1)  
6       "Agricultural purpose" ..... Section 1-301 (2)  
7       "Amount financed" ..... Section 2-111  
8       "Average daily balance" ..... Section 1-301 (3)  
9       "Cash price" ..... Section 2-110  
10       **"Check"** ..... **Section 7-106**  
11       "Civil court" ..... Section 6-117  
12       "Closing costs" ..... Section 1-301 (4)  
13       "Conspicuous" ..... Section 1-301 (5)  
14       "Consumer credit" ..... Section 1-301 (6)  
15       "Consumer Credit insurance" ..... Section 4-103  
16       "Consumer Credit sale" ..... Section 2-104  
17       "Consumer lease" ..... Section 2-106

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1	"Consumer loan" . . . . .	Section 3-104
2	"Consumer related loan" . . . . .	Section 3-602
3	"Consumer related sale" . . . . .	Section 2-602
4	"Credit" . . . . .	Section 1-301 (7)
5	"Creditor" . . . . .	Section 1-301 (8)
6	"Credit Insurance Act" . . . . .	Section 4-102 (3)
7	"Credit service charge" . . . . .	Section 2-109
8	<b>"Deferred Deposit transaction" . . . . .</b>	<b>Section 7-105</b>
9	"Department" . . . . .	Section 6-103
10	"Director" . . . . .	Section 6-103.5
11	"Earnings" . . . . .	Section 1-301 (9)
12	"Federal Consumer Credit	
13	Protection Act" . . . . .	Section 1-302
14	"Goods" . . . . .	Section 2-105 (1)
15	"Home solicitation sale" . . . . .	Section 2-501
16	"Lender" . . . . .	Section 3-107 (1)
17	"Lender credit card or similar	
18	arrangement" . . . . .	Section 1-301 (10)
19	"Loan" . . . . .	Section 3-106
20	"Loan finance charge" . . . . .	Section 3-109
21	"Loan Primarily Secured by an	
22	Interest in Land" . . . . .	Section 3-105
23	"Merchandise certificate" . . . . .	Section 2-105 (2)
24	"Mortgage transaction" . . . . .	Section 1-301 (17)
25	"Official fees" . . . . .	Section 1-301 (11)
26	"Organization" . . . . .	Section 1-301 (12)
27	"Payable in installments" . . . . .	Section 1-301 (13)
28	"Person" . . . . .	Section 1-301 (14)
29	"Person related to" . . . . .	Section 1-301 (15)
30	"Precomputed" (loan) . . . . .	Section 3-107 (2)
31	"Precomputed" (sale) . . . . .	Section 2-105 (7)
32	"Presumed" or "Presumption" . . . . .	Section 1-301 (16)
33	"Principal" . . . . .	Section 3-107 (3)
34	"Regularly engaged" . . . . .	Section 1-301 (18)
35	<b>"Renewal" . . . . .</b>	<b>Section 7-107</b>
36	"Revolving charge account" . . . . .	Section 2-108
37	"Revolving loan account" . . . . .	Section 3-108
38	"Sale of goods" . . . . .	Section 2-105 (4)
39	"Sale of an interest in land" . . . . .	Section 2-105 (6)
40	"Sale of services" . . . . .	Section 2-105 (5)
41	"Seller" . . . . .	Section 2-107
42	"Seller credit card" . . . . .	Section 1-301 (19)

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"Services" ..... Section 2-105 (3)

"**Small loan**" ..... **Section 7-104**

"Supervised financial

organization" ..... Section 1-301 (20)

"Supervised lender" ..... Section 3-501 (2)

"Supervised loan" ..... Section 3-501 (1)

SECTION 2. IC 24-4.5-5-203 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 203. Civil Liability for Violation of Disclosure Provisions ) (1) Except as otherwise provided in this section, a creditor who, in violation of the provisions on disclosure (Part 3), of the Chapter on Credit Sales (Chapter 2), ~~and~~ the Chapter on Loans (Chapter 3), **and the Chapter on Small Loans (Chapter 7)**, fails to disclose information to a person entitled to the information under this Article is liable to that person in an amount equal to the sum of:

(a) the following:

(1) in the case of an individual action, twice the amount of the credit service or loan finance charge in connection with the transaction, but the liability pursuant to this subdivision shall be not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000); or

(2) in the case of a class action, an amount the court allows, except that as to each member of the class no minimum recovery is applicable, and the total recovery under this subdivision in any class action or series of class actions arising out of the same failure to comply by the same creditor may not be more than the lesser of:

(i) five hundred thousand dollars (\$500,000); or

(ii) one percent (1%) of the net worth of the creditor; and

(b) in the case of a successful action to enforce the liability under paragraph (a), the costs of the action together with reasonable attorney's fees as determined by the court. In determining the amount of the award in a class action, the court shall consider, among other relevant factors, the amount of any award granted under the federal Consumer Credit Protection Act (15 U.S.C. 1601 et seq.), the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

(2) A creditor has no liability under this section if within sixty (60) days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the



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1 creditor notifies the person concerned of the error and makes whatever  
2 adjustments in the appropriate account are necessary to assure that the  
3 person will not be required to pay a credit service charge or loan  
4 finance charge in excess of the amount or percentage rate actually  
5 disclosed.

6 (3) A creditor may not be held liable in any action brought under  
7 this section for a violation of this Article if the creditor shows by a  
8 preponderance of evidence that the violation was not intentional and  
9 resulted from a bona fide error notwithstanding the maintenance of  
10 procedures reasonably adapted to avoid the error.

11 (4) If there are multiple obligors in a consumer credit transaction or  
12 consumer lease, there may not be more than one (1) recovery of  
13 damages under subdivision (a)(1) for one (1) violation of this article  
14 with respect to that consumer credit transaction or consumer lease.

15 (5) The multiple failure to disclose to any person any information  
16 required under this article to be disclosed in connection with a single  
17 account under an open end consumer credit plan, a single consumer  
18 credit sale, a consumer loan, a consumer lease, or another extension of  
19 consumer credit entitles that person to a single recovery under this  
20 section. However, continued failure to disclose after a recovery has  
21 been granted gives rise to rights to additional recoveries.

22 (6) Any action which may be brought under this section against the  
23 original creditor in any credit transaction involving a security interest  
24 in land may be maintained against any subsequent assignee of the  
25 original creditor where the assignee, its subsidiaries, or affiliates were  
26 in a continuing business relationship with the original creditor either at  
27 the time the credit was extended or at the time of the assignment,  
28 unless the assignment was involuntary, or the assignee shows by a  
29 preponderance of evidence that it did not have reasonable grounds to  
30 believe that the original creditor was engaged in violations of this  
31 Article, and that it maintained procedures reasonably adapted to  
32 apprise it of the existence of the violations.

33 (7) No action pursuant to this section may be brought more than one  
34 (1) year after the date of the occurrence of the violations.

35 (8) In this section, creditor includes a person who in the ordinary  
36 course of business regularly extends or arranges for the extension of  
37 credit, or offers to arrange for the extension of credit.

38 SECTION 3. IC 24-4.5-7 IS ADDED TO THE INDIANA CODE  
39 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
40 JULY 1, 1999]:

41 **Chapter 7. Small Loans**

42 **Sec. 101. Short Title - This Chapter shall be known and may be**

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1 cited as Uniform Consumer Credit Code - Small Loans.

2 Sec. 102. Except as provided, all provisions of this article  
3 applying to consumer loans apply to small loans, as defined in this  
4 chapter.

5 Sec. 103. The following definitions apply to this chapter:

6 "Small loan" ..... Section 7-104

7 "Deferred deposit transaction" ..... Section 7-105

8 "Check" ..... Section 7-106

9 "Renewal" ..... Section 7-107

10 Sec. 104. "Small loan" means a deferred deposit transaction  
11 with a principal loan amount of five hundred dollars (\$500) or less  
12 with a term of less than thirty (30) days.

13 Sec. 105. "Deferred deposit transaction" means, for  
14 consideration, accepting a check and holding the check for a period  
15 before deposit or presentment in accordance with an agreement  
16 between the maker and the lender. The agreement may be  
17 expressed or implied.

18 Sec. 106. For purposes of this chapter, "check" has the meaning  
19 set forth in IC 26-1-3.1-104.

20 Sec. 107. "Renewal" refers to a deferred deposit transaction  
21 that takes the place of an existing deferred deposit transaction,  
22 where a check held as security is not deposited into an account of  
23 the lender at a depository institution.

24 Sec. 201. Loan finance charges on a small loan and subsequent  
25 renewals are limited to twenty dollars (\$20) per transaction.

26 Sec. 202. (1) Notwithstanding any other law, only the following  
27 fees may be contracted for and received by the lender on a small  
28 loan or subsequent refinancing:

29 (a) The parties may contract for a delinquency charge of not  
30 more than five dollars (\$5) on any installment not paid in full  
31 within ten (10) days after its scheduled due date.

32 (b) A delinquency charge under this section may be collected  
33 only one (1) time on an installment, however long it remains  
34 in default. A delinquency charge may be collected any time  
35 after it accrues.

36 (c) The charge of five dollars (\$5) in subdivision (a) is subject  
37 to change under IC 24-4.5-1-106.

38 (d) If the parties provide by contract for a delinquency charge  
39 that is subject to change, the lender shall disclose that the  
40 amount of the delinquency charge is subject to change under  
41 IC 24-4.5-1-106.

42 (2) The agreement may provide for the payment by the debtor





of reasonable attorney's fees after default and referral to an attorney who is not a salaried employee of the lender. A provision in violation of this section is unenforceable.

(3) An additional charge may not exceed twenty dollars (\$20) for each return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal, or share draft issued by the debtor.

Sec. 301. (1) For purposes of this section, the lender shall disclose to the debtor to whom credit is extended with respect to a small loan or subsequent refinancing the information required by the Federal Consumer Credit Protection Act.

(2) In addition to the requirements of subsection (1), the lender must conspicuously display in bold type a notice to the public in the lending area of each business location and in the loan documents the following statement:

"WARNING: The cost of your transaction may be higher than similar transactions offered by other lending institutions. The transactions are regulated by the State of Indiana, Department of Financial Institutions. The transaction may be refinanced only one time, after which payment in full is required."

Sec. 401. A small loan may not be made for a term of less than fourteen (14) days.

Sec. 402. A small loan may be secured by only one (1) check per deferred deposit transaction. The check may not exceed the amount advanced to or on behalf of the consumer, plus loan finance charges contracted for.

Sec. 403. A small loan may not be secured by personal property other than a check.

Sec. 404. Use of Multiple Agreements - With respect to a small loan or subsequent refinancing, a lender may not permit a person to become obligated under more than one (1) loan agreement. The excess amount of a loan finance charge in agreements in violation of this section is an excess charge for purposes of provisions on the effect of violations on rights of parties (IC 24-4.5-5-202) and provisions on civil actions by the department (IC 24-4.5-6-113).

Sec. 405. Conduct of Business Other Than Making Loans - A licensee may carry on other business at a location where the licensee makes small loans unless the licensee carries on other business to evade or violate this article.

Sec. 406. No Assignment of Earnings - (1) A lender may not take an assignment of earnings of the debtor for payment or as security



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1 for payment of a debt arising from a small loan or otherwise. An  
 2 assignment of earnings in violation of this section is unenforceable  
 3 by the assignee of the earnings and revocable by the debtor. This  
 4 section does not prohibit an employee from authorizing deductions  
 5 from the employee's earnings if the authorization is revocable and  
 6 is permitted by law.

7 (2) A sale of unpaid earnings made in consideration of the  
 8 payment of money to or for the account of the seller of the earnings  
 9 is considered to be a loan to the seller secured by an assignment of  
 10 earnings.

11 Sec. 407. Limitation on Default Charges - An agreement for a  
 12 small loan may not provide for charges as a result of default by the  
 13 debtor other than those authorized by this chapter. A provision in  
 14 violation of this section is unenforceable.

15 Sec. 408. A lender may not permit a debtor to refinance the  
 16 same small loan more than one (1) time.

17 Sec. 409. (1) A renewal or a refinancing of a small loan requires:

- 18 (a) a new contractual agreement;
- 19 (b) a new check as security; and
- 20 (c) new disclosures under section 301 of this chapter.

21 (2) If a customer pays off the small loan in cash or its equivalent,  
 22 the check that was held as security must be returned to the  
 23 customer.

24 Sec. 410. Except if a customer has written a check on an account  
 25 that is closed before the agreed upon negotiation date for the  
 26 check, a civil or criminal penalty does not apply to small loan  
 27 transactions under IC 26-2-7, IC 34-4-30, or IC 35-43-5. A  
 28 contractual agreement in a small loan transaction must include the  
 29 above language.

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